IN THE HIGH COURT OF JUDICATURE FOR RAJASTHAN AT JODHPUR.

O R D E R

Lakhpat Raj v. State of Rajasthan & Anr.

S.B.CIVIL WRIT PETITION NO.3004/1993
under Article 226 of the Constitution of India.

Date of Order : 10th August, 2005

P R E S E N T

HON'BLE MR.JUSTICE GOVIND MATHUR

Mr. M.S.Singhvi, for the petitioner.
Mr. B.L.Tiwari, Dy.Govt.Advocate.

BY THE COURT :

This petition for writ is directed against the order dated 15.6.1993 passed by Secretary to the Government of Rajasthan, Department of Personnel (Group-III) under the orders of Government of Rajasthan imposing upon petitioner a penalty of compulsory retirement with proportionate pension.

The factual matrix required to be marshalled for adjudication of the issue involved in the instant petition is that the petitioner while holding the post

of Executive Engineer-cum-Technical Assistant to Additional Chief Engineer, Public Health and Engineering Department, Ajmer was appointed as Officer incharge on behalf of State of Rajasthan in a civil suit pending before the Court of Munsif Magistrate (East), Ajmer titled as General Agencies and Suppliers & Ors. v. State of Rajasthan and also a misc. appeal titled as State of Rajasthan v. the General Agencies and Suppliers & Ors. pending in the court of learned Additional District Judge, Ajmer.

A copy of a letter dated 1/2.2.1983 from Dy. Secretary to the Government of Rajasthan, Department of Medical and Health Services addressed to the Chief Engineer, Public Health and Engineering Department and endorsed to the Executive Engineer-cum-Technical Assistant to Additional Chief Engineer, Public Health and Engineering Department, Ajmer was received by the petitioner on 3.2.1983, with instruction to present compromise before the court concerned if the parties are prepared to do so. While endorsing copy of the letter referred above a specific note was also made instructing the petitioner to take immediate action by presenting the compromise before the court concerned.

The petitioner on receipt of letter dated 1/2.2.1983 on 3.2.1983 itself made contact with Government Advocate to do needful. The Government Advocate by a communication dated 3.2.1983 instructed

the petitioner to get the details of compromise verified from the Chief Engineer, Public Health and Engineering Department. The petitioner in response to the letter dated 3.2.1983 by letter dated 4.2.1983 informed the Government Advocate that proforma of agreement was found correct.

In opinion of the Government Advocate the agreement proposed was not in interest of the State, therefore, by a communication dated 4.2.1983 he advised the Government to reconsider the terms of compromise to guard the interest of State. The advise given by the Government Advocate ultimately prevailed and the compromise proposed was not verified and the same was withdrawn from the Court.

With the factual background above the petitioner was served with a memorandum dated 21.11.1985 under Rule 16 of the Rajasthan Civil Services (Classification, Control and Appeal) Rules, 1958 (hereinafter referred to as "the Rules of 1958") charging misconduct as under:-

> "That the said Shri L.R.Pithi, while working as XEN, PHED and Officer-in-charge in the litigation case between the State Govt. and the four firms of Bhilwara (earlier engaged in drilling of Hand Pumps) displayed undue haste in advising the Govt. Advocate, Ajmer

> to file an agreement (which letter proved spurious) in the court of Munsif, Ajmer. Shri Pithi ignored the advice of the Govt. Advocate for review of the decision and instead of seeking advice from the higher authorities became instrumental in getting a spurious agreement filed in the court. The conduct of Shri Pithi in the affair was thus not only un-becoming of a responsible officer but also sizeable loss to the Govt. but for the timely detection of the fraud and the remedial measures taken. The details of the charge is available in inclosed statement of Allegations."

A statement of allegation was also enclosed with memorandum which provides necessary and minute details of entire issue on basis of which the petitioner was charged for misconduct. The Government subsequently decided to hold the joint inquiry against the petitioner with Shri G.P.Nagar, the then Dy. Secretary to the Government of Rajasthan, Shri Prakash Sharma, Legal Assistant, Shri Gulshan Kapur, Legal Assistant and Shri Manoharlal Sharma, a Upper Division Clerk. The Commissioner of inquiry was appointed as inquiry officer to inquire into the charges levelled. The inquiry officer conducted the inquiry and submitted his report to the disciplinary authority wherein while finding the petitioner guilty for the misconduct discussed the material to substantiate the finding which reads as under:-

"आरोपित अधिकारी के खिलाफ लगाये गये आरोप एक तरह से उप सचिव के द्वारा भेजी गई चिट्ठी 1/2 फरवरी, 1983 से शुरू होता है । ये पत्र मुख्य अभियन्ता के नाम लिखा गया था और इसकी प्रतिलिपियां अतिरिक्त मुख्य अभियन्ता, श्री एल. आर. पित्ती, राजकीय अधिवक्ता अजमेर, श्री श्याम सुन्दर डीडवानीया आदि को भी भेजी गई थी । इस पत्र में लिखा था कि यदि ठेकेदार लोग संलग्न प्रारूप के अनुसार समझौता करने को तैयार हे तो उनसे समझौता कर न्यायालयों पेश कर देवे । श्री पित्ती को हिदायत दी गई थी कि समझौता प्रस्तुत कर अविलम्ब इस विभाग को सूचित करने का कष्ट करें । वे पत्र श्री पित्ती को 3 तारीख को ही मिल गया (पत्र इतना जल्दी मिल जाना जो कि 2 तारीख को ही सचिवालय से भेजा गया था नामुमकिन नहीं तो अचम्भे की बात जरूर है ऐसा लगता है कि ये पत्र किसी व्यक्ति द्वारा अजमेर ले जाया गया था इस सम्भावना से इन्कार नहीं किया जा सकता इस पत्र के साथ जो संलग्न राजीनामे का प्रार्थना पत्र था और जिस पर भी उप सचिव के कोई हस्ताक्षर नहीं थे को श्री पित्ती ने श्री अनिल नाग को उसी दिन पहुंचाया और कहा कि वो तुरन्त समझौता न्यायालय में फाईल कर दे । श्री अनिल नाग जो अतिरिक्त सरकारी अधिवक्ता थे को समझौते का प्रारूप कहा अटपटा लगा और शायद सरकार के हित में भी नहीं लगा इसलिए उन्होंने उसी दिन यानी 3 तारीख को (एक्जी.पी.13) श्री पित्ती को चिट्ठी लिखी कि वो मुख्य अभियन्ता जयपुर से वेरीफाई करवाके शीघ्रातीशीघ्र सूचित करे । श्री पित्ती ने इस पत्र के मिलने के बाद भी यह नहीं सोचा कि शायद प्रारूप फर्जी हो या गलत हो सकता है । ये इस बात व इस चीज को और भी साबित कर देते है कि शायद पित्ती भी इस सारे प्रकरण में शामिल थे । श्री पित्ती ने बिना जयपुर किसी से बात किये हुवे अतिरिक्त राजकीय अभिभाषक को फिर चिट्ठी लिख दी कि पहले दिये गये प्रारूप के अनुसार समझौता शीघ्र कर लिया जावे ।यही नहीं यह भी कहा गया कि समझौता प्रारूप सही पाया गया । उसी दिन यानी 4 तारीख को श्री अनिल नाग ने एक पत्र लिखा जिसकी प्रतिलिपियां जिलाधीश,

अजमेर, मुख्य सचिव, विधि मंत्री और श्री पित्ती को भी भेजी जिसमें समझौते के प्रारूप के सम्बन्ध में कुछ मूल और महत्वपूर्ण सुझाव दिये गये । इसमें यह भी कहा गया कि राजीनामा कभी भी प्रस्तुत किया जा सकता है और इतनी जल्दी नहीं करनी चाहिये और राज्य सरकार को इस मामले पर दुबारा विचार करना चाहिये । श्री पित्ती ने इस पत्र के मिलते ही फिर एक पत्र 4 तारीख को यानी उसी दिन लिख दिया जिसमें उपरोक्त पत्र का यानी दिनांक 4.2.83 के पत्र का हवाला दिया और कहा कि विधि विभाग ने पहले ही प्रारूप को अनुमोदित कर दिया है इसलिए न्यायालय में राजीनामा फाईल कर दिया जाना चाहिये । मेरे ख्याल से उपरोक्त दस्तावेज ही श्री पित्ती के खिलाफ लगाये गये आरोप को साबित करने में काफी होते हैं ।"

From reading of the discussion above it is clear that while finding the petitioner guilty the inquiry officer relied on circumstances which are : (1) the letter dated 1/2.2.1983 reached at Ajmer on 3.2.1983 i.e. surprising though not impossible. The letter was probably brought by some person by hand; (2) the copy of the letter received by the petitioner was not bearing signatures of the Dy. Secretary; (3) the petitioner on 3.2.1983 itself made contact with the Government Advocate and instructed to file the agreement before the Court; and (4) the Government Advocate sought clarification of the proposed compromise on 3.2.1983 and also then advised to reconsider the terms of compromise but the petitioner again emphasised for approval of the compromise being the same was having sanction from the Department of Law.

In view of chain of circumstances above the inquiry officer held that probably the petitioner too was involved in the case of preparing a spurious compromise.

The disciplinary authority by an order dated 19.12.1990 while concurring with the findings given by the inquiry officer held the petitioner guilty for the misconduct charged and imposed penalty of compulsory retirement with proportionate pension.

The petitioner being aggrieved by order imposing penalty dated 19.12.1990 preferred a writ petition (SBCivil Writ Petition No.296/1991) which came to be accepted by this Court by judgment dated 23.10.1991, setting aside the order dated 19.12.1990 as a copy of inquiry report was not supplied to the petitioner before imposing the penalty. By the judgment dated 23.10.1991 respondent State was directed to give a copy of inquiry report to the petitioner and thereafter to pass a proper order after considering the representation, if any, filed by the petitioner.

In pursuant to the directions given by this Court by judgment dated 23.10.1991 a copy of the inquiry report was supplied to the petitioner under a communication dated 21.4.1992. The petitioner after

receiving the same submitted a detailed representation explaining all the circumstances and also raising various objections with regard to inquiry proceedings and the finding given by the inquiry officer.

The disciplinary authority after receiving the representation submitted by the petitioner passed an order dated 15.6.1993 and again imposed the penalty of compulsory retirement with proportionate pension. The disciplinary authority while imposing penalty observed as under:-

'श्री एल. आर. पित्ती -

श्री पित्ती द्वारा अपने अभ्यावेदन में निम्न बिन्दू उठाये है:-

(1)आरोपित का कथन है कि उनके द्वारा बचाव पक्ष में प्रस्तुत जवाब एवम् दस्तावेजों की जांच अधिकारी ने नजर अन्दाज किया है ।

आरोपित का उक्त कथन उचित नहीं है । जांच अधिकारी ने नियमानुसार जांच पूर्ण कर जांच प्रतिवेदन प्रस्तुत किया है ।

(2) आरोपित का कथन है कि विधि विभाग की अनुमति से राज्य सरकार द्वारा जारी किये गये पत्र पर राजकीय अधिवक्ता को पत्र की वैद्यता के लिये आपत्ति उठाने का अधिकार नहीं है ।

आरोपित का उकत कथन न्यायोचित नहीं है । राजकीय अधिवक्ता द्वारा पत्र की वैद्यता पर उठाई गई आपत्ति उचित थी क्योंकि पत्र गलत पाया गया था । आरोपित को मुख्य अभियन्ता से सही तथ्यों की जानकारी प्राप्त करनी चाहिये थी,

क्योंकि पत्र मुख्य अभियन्ता को ही सम्बोधित था और आरोपित को बिना तथ्यों की जानकारी किये हुवे राजकीय अधिवक्ता को पत्र पर कार्यवाही करने के निर्देश नहीं देने चाहिये थे ।

(3) आरोपित अधिकारी का कथन है कि जांच अधिकारी द्वारा आरोपों पर तर्क पूर्ण निष्कर्ष नहीं दिये गये है ।

जांच अधिकारी द्वारा बहुत स्पष्ट निष्कर्ष दिये गये है तथा उसके द्वारा आरोपों को प्रमाणित माना है ।

(4)आरोपित का कथन है कि राज्य सरकार को इस प्रकरण में कोई आर्थिक हानि नहीं हुई है ।

आरोपित अधिकारी द्वारा उठाया गया बिन्दू आरोप पत्र में सम्मिलत नहीं है । आरोप में स्पष्ट उल्लेख किया गया है कि आरोपित अधिकारी की भूमिका गैर जिम्मेदार, सन्देहास्पद तथा विवादित आचरण रहा है जिसकी वजह से राज्य सरकार को काफी आर्थिक हानि हो सकती थी ।

(5) आरोपित का कथन है कि सी. सी. ए. नियम, 1958 के नियम 18 के अन्तर्गत संयुक्त जांच का आदेश जारी किये जाने के उपरान्त नये सिरे से आरोप पत्रादि जारी किये जाने चाहिए थे ।

आरोपित का कथन गलत है । सी. सी. ए. नियम, 1958 के नियम 18 के अनुसरण में संयुक्त जांच के आदेश पारित किये जाने के पश्चात् नये सिरे से आरोप पत्रादि जारी करना नियमानुसार आवश्यक नहीं है ।

(6) आरोपित का कथन है कि अन्वेषण के उपरान्त पुलिस द्वारा अपराधिक प्रकरण में अन्तिम प्रतिवेदन प्रस्तुत किया है तथा जिसे सक्षम न्यायालय द्वारा स्वीकार किया जा चुका है । अत: आरोपित पर इस प्रकरण में उन आरोपों पर कोई दण्ड नहीं दिया जा सकता ।

आरोपित का उक्त कथन सारहीन है क्योंकि पुलिस द्वारा की गई कार्यवाही व विभागीय जांच की प्रक्रिया के मूल सिद्धान्त भिन्न-भिन्न है । एफ. आर. दिये जाने के उपरान्त भी आरोपित की विभागीय जांच में आरोप सिद्ध पाये जाने पर दण्डित किया जा सकता है ।

आरोपित अधिकारी द्वारा अपने अभ्यावेदन में उपरोक्त बिन्दूओं के अतिरिक्त बिन्दू भी उठाये है जिनके बारे में जांच अधिकारी ने अपने जांच प्रतिवेदन में पूर्ण विवेचन किया है ।

अभ्यावेदन की इस स्टेज पर आरोपित अधिकारी से यह अपेक्षा की जाती है कि वह केवल मात्र मुख्य कानूनी एवम् तथ्यात्मक बिन्दुओं का समावेश अपने अभ्यावेदन में करे जिनकी की जांच अधिकारी द्वारा जांच के दौरान अनदेखी की गई है ।"

Being aggrieved by the order dated 15.6.1993 present petition for writ is preferred by the petitioner under Articles 226 and 227 of the Constitution of India.

A reply to the writ petition has been filed on behalf of the respondents in general defending the order passed by the disciplinary authority.

Heard counsel for the parties.

Counsel for the petitioner while giving challenge to the order impugned dated 15.6.1993 mainly emphasised on three contentions; those are; (1) the

order passed by the disciplinary authority is neither a speaking nor a reasoned order as the disciplinary authority failed to consider the contentions raised by the petitioner in his representation explaining entire circumstances and objecting the findings given by the inquiry officer; (2) the order passed by the disciplinary authority deserves to be quashed as no specific finding is given with regard to the charge of misconduct levelled against the petitioner as required under sub-rule(9) of Rule 16 of the Rules of 1958; and (3) the finding given by the inquiry officer is not specific and is based on surmises and conjectures.

The first contention of the counsel for the petitioner is that the disciplinary authority by order dated 15.6.1993 while imposing the penalty of compulsory retirement with proportionate pension failed to consider the objections and explanation submitted by the petitioner with regard to inquiry proceedings and the findings given by the inquiry officer. It is contended by counsel for the petitioner that the disciplinary authority in most cursory manner rejected the objections, contentions and explanations tendered by the petitioner. It is also emphasised that the disciplinary authority while passing the order impugned refused to deal with the factual contentions raised by the petitioner pertaining to the controversy in dispute but were not part of the inquiry report. According to counsel for the petitioner all those

issues were also required to be dealt with by the disciplinary authority.

Per contra, it is contended by counsel for the respondents that the disciplinary authority considered all the objections step by step and dealt with the same to the extent it is required. It is also contended by counsel for the respondents that each and every fact averred in the representation is not required to be dealt with by the disciplinary authority as the order passed by him is an order concurring with the finding given by the inquiry officer.

I have examined the order passed by the disciplinary authority, the representation submitted by the petitioner and also the report of inquiry officer. The report of inquiry officer to the extent it relates to the petitioner is mainly based on chain of circumstances. The inquiry officer on basis of the circumstances held that the petitioner was probably involved in the case of getting an spurious compromise. The petitioner in his representation stated that there was no occasion for him to get himself involved in preparing a spurious compromise and for that purpose he narrated various relevant facts. All these facts have not been considered by the disciplinary authority.

It is well settled that a report of the inquiry officer giving findings against a delinquent employee is a material adverse, therefore, the disciplinary authority while passing an order imposing penalty is required to consider and deal with all the contentions, objections and explanations submitted by the delinquent employee in his representation.

This Court in the case of S.L.Gupta v. LIC & Anr., 2005(4) RDD 861 (Raj), held as under:-

> "In the instant case I am to see as to whether the above principles can be applied in the present set of facts. Hon'ble Supreme Court in Union of India v. Mohd. Ramzan Khan, AIR 1991 SC 471, held that the inquiry report is an adverse material if the Inquiry Officer records a findings of guilty and with proposed punishment so far as the delinquent is concerned. In a quasi judicial inquiry if the delinquent is being deprived of knowledge of the material against him though the same is being available to the disciplinary authority in the matter of reaching his conclusion rules of natural justice would be affected. In view of this position of law the inquiry report wherein an employee is found guilty, is adverse material to the delinquent employee. In the present case also the inquiry report alongwith the notice to show cause was given to the petitioner as an adverse material and the petitioner was required to meet the same by submitting a reply. The petitioner submitted a reply to the disciplinary authority and raised various

> objections with regard to denial of opportunity of defence and also with regard to the findings of the Inquiry Officer. As I stated above that in the light of the law laid down by Hon'ble Supreme Court in the case of Mohd. Ramzan Khan's case (supra) the inquiry report is an adverse material. Therefore, the agreements to the findings by the disciplinary authority was tentative. The disciplinary authority after receiving the order and comments by the delinquent employee is always required to reach at its own findings and conclusions. The disciplinary authority is under an obligation to deal with the objections raised by the employee and he is required to prescribed findings and conclusions supported by the reasons. In a case where a copy of the inquiry report is supplied to a delinquent employee with a notice to show cause with regard to proposed punishment, the principle laid down in the case of Ram Kumar's case (supra) cannot be applied. These are not the case of agreement with the findings of Inquiry Officer but in these cases the inquiry report itself has been treated as an adverse material, as such it is all the more necessary for the disciplinary authority to record reasons in support of his findings and conclusions."

In the present case the disciplinary authority refused to consider the factual explanations give by the petitioner in representation. The disciplinary authority also considered the objections raised by the petitioner in most cursory and superficial manner. In fact it does not reveal from

the order of the disciplinary authority as to how he considered all the factual contentions raised by the petitioner in the representation. The order impugned, therefore, on this count alone deserves to be quashed and set aside.

The second contention of the counsel for the petitioner is that the order impugned deserves to be quashed and set aside as the finding given by the disciplinary authority is neither specific nor is supported by the reasons.

From this angle too I examined the order passed by the disciplinary authority. The disciplinary authority at the first instance reproduced the allegations levelled against the petitioner and thereafter dealt with in brief the contentions raised by the petitioner in his representation and then without discussing the record of the inquiry and the evidence available on record held the petitioner guilty for misconduct. The finding given by the disciplinary authority is worth to be reproduced which reads as under:-

> "उपरोक्त विवेचन से यह स्पष्ट है कि आरोपितों द्वारा अपने अभ्यावेदनों में उठाये गये विभिन्न बिन्दू स्वीकार किये जाने योग्य नहीं है तथा उनके विरूद्ध लगाये गये आरोप पूर्णत: प्रमाणित होते है ।

राज्य सरकार द्वारा सर्वश्री जी. पी. नागर, एल. आर. पित्ती एवं मनोहर लाल वर्मा के विरूद्ध प्रमाणित आरोपों हेतु उन्हें निम्न दण्ड से दण्डित किये जाने का अनन्तिम निर्णय लिया गया :-

1- श्री जी. पी. नागर	अनुपातिक पेन्शन पर अनिवार्य रूप से सेवा निवृति
2- श्री एल. आर. पित्ती	अनुपातिक पेन्शन पर अनिवार्य रूप से सेवा निवृति
3- श्री मनोहरलाल वर्मा,	राज्य सेवा से पृथक ।"

From the reading of the findings above it appears that the disciplinary authority in fact was acting as an appellate authority or as if there was no responsibility of the prosecution to prove the charges but was a responsibility of the delinquent to prove his innocence. The disciplinary authority in his entire order no where discussed the evidence available on record on basis of which the petitioner was found guilty for the charge of misconduct. Counsel for the respondents also failed to point out from the order dated 15.6.1993 the discussion of the evidence and its worth to be accepted by the disciplinary authority. The disciplinary authority just dealt with in brief the contention raised by the petitioner in representation and thereafter held the petitioner guilty for misconduct. Therefore, in view of it I am having no hesitation in holding that the finding given by the disciplinary authority is not supported by sufficient evidence. The disciplinary authority,

therefore, failed to consider the record of inquiry and to record its finding on the charge of misconduct as required under sub-rule(9) of Rule 16 of the Rules of 1958.

The last contention of the counsel for the petitioner is that the inquiry officer based his finding on surmises and conjectures, the finding given is not at all specific, therefore, the disciplinary authority erred while accepting the same. The counsel for the petitioner to fortify the contention urged to examine the evidence available and then to the inference drawn by the inquiry officer.

With regard to this contention of counsel for the petitioner an objection is raised by counsel for the respondents to the effect that the findings given by the inquiry officer based on facts are not required to be examined by this Court while exercising powers under Articles 226 and 227 of the Constitution of India as the same shall amount to reappreciation of evidence and that can be done only by an appellate court and not by a court of writ jurisdiction.

I am having no disagreement with the counsel for the respondents that writ court does not exercise the appellate powers. However, it does not mean that a writ court is precluded from seeing the facts on basis of which a finding is given by the inquiry officer or

even by quasi judicial or judicial authority. The factual aspect is always required to be examined to verify the foundation of the ultimate findings. It is also worthwhile to note that in the present case it is all the more necessary as the petitioner is having no remedy of appeal in administrative hierarchy as the order impugned is passed by the Governor of the State, as such the remedy before this Court by way of filing a writ petition is the first remedy availed by the petitioner to challenge the order impugned.

I have examined the report of the inquiry officer relevant portion of which is reproduced in preceding paras. The inquiry officer while finding the petitioner guilty relied upon the chain of circumstances. The first circumstance on which the inquiry officer relied is that the order dated 1/2.2.1983 reached at Ajmer on 3.2.1983 i.e. surprising though not impossible. The second circumstance on which the inquiry officer relied is that the copy of letter dated 1/2.2.1983 was not bearing signatures of the Dy. Secretary. The third circumstance relied upon by the inquiry officer is that the petitioner received communication dated 1/2.2.1983 on 3.2.1983 and on the same day he made contact with Government Advocate and instructed him to file the agreement before the Court. On basis of these circumstances it is held that the haste on part of the petitioner creates doubts about his involvement in

getting the spurious compromise. The last circumstance on which the inquiry officer based his finding is that the petitioner on 4.2.1983 also reiterated to file the compromise in court as the same was having sanction from the Department of Law.

The inquiry officer himself accepted that it is not impossible to get a letter at Ajmer from Jaipur within a period of a day. I failed to understand as to why the inquiry officer surprised with the fact that the letter dated 1/2.2.1983 reached at Ajmer on 3.2.1983. The letter within the period above may reach at Ajmer by post and remittance of the same even by hand in itself does not create any illegality. Be that as it may, receipt of the letter dated 1/2.2.1983 by the petitioner on 3.2.1983 at Ajmer does not create any doubt with regard to involvement of the petitioner in creating any spurious document.

The another circumstance on basis of which the inquiry officer has based his finding is that the petitioner acted upon a letter which was not bearing the signatures of Dy. Secretary. The letter dated 1/2.2.1983 was addressed to the Chief Engineer, Public Health and Engineering Department, Jaipur and copy of the same was endorsed to the petitioner by name being officer incharge of the case concerned. In normal course it is only the original document which bears the signature and the copies do not bear the

signatures of the authority who has issued the communication. It is also pertinent to note here that the document dated 1/2.2.1983 is also bearing a note instructing the petitioner by name to act without any delay and then to inform the department at earliest. The petitioner, therefore, may have acted bonafidely on receiving the copy of the document above. Merely on the count that the copy of the communication concerned was not bearing signatures, it could not be presumed that the petitioner acted erroneously.

The resultant of third and fourth circumstance relied upon by the inquiry officer is that the petitioner acted in haste. The action taken in haste itself is no misconduct. Hon'ble Supreme Court in the case of Chairman & M.D., BPL Ltd. v. S.P.Gururaja & Ors., reported in 2003(8) SCC 567, held that undue haste also is a matter which by itself would not have been a ground for exercise of power of judicial review unless it is held to be malafide. The question as to whether any undue haste has been shown in taking an administrative decision is essentially a question of fact.

In the present case the action taken by the petitioner is termed as an action in haste but some times such action could also be treated as an action taken promptly. To term an action in haste bears a negative essence and, therefore, it always requires a

malice. In the present set of circumstances the inquiry officer utterly failed to prove any malice on the part of the petitioner. The finding given by the inquiry officer is not definite as it is based on probabilities. The inquiry officer while holding the petitioner guilty gave a finding that the petitioner was probably involved in the case. The disciplinary authority should not have accepted such indefinite finding. A finding of misconduct should always be specific and definite.

The discussion made above left me with no option but to hold the order impugned dated 15.6.1993 bad in eye of law. The same, therefore, deserves to be quashed.

Accordingly the writ petition is allowed. The order dated 15.6.1993 passed by the Dy. Secretary to the Government of Rajasthan, Department of Personnel (Group-III) under the order of the disciplinary authority is hereby quashed. The petitioner shall be entitled for all consequential benefits flowing as a consequence of quashing the order above.

No order as to costs.

(GOVIND MATHUR),J.

kkm/ps.